

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTONIO LYNN FLUKER, JR.,

Plaintiff,

v.

GARY CARR,

Defendant.

Case No. 22-11992
Honorable Sean F. Cox
Magistrate Judge Elizabeth A. Stafford

**ORDER FOR THE U.S. MARSHALS SERVICE TO USE REASONABLE
EFFORTS TO SERVE DEFENDANT GARY CARR**

Plaintiff Antonio Lynn Fluker, Jr., proceeding pro se and *in forma pauperis*, sues Gary Carr, alleging that he violated the Right to Financial Privacy Act (RFPA). ECF No.5. The Honorable Sean F. Cox referred the case to this Court for all pretrial matters under 28 U.S.C. § 636(b)(1). ECF No. 31.

28 U.S.C. § 1915(d) requires that officers of the court “issue and serve process” when a plaintiff is proceeding *in forma pauperis*, and Federal Rule of Civil Procedure 4(c)(3) provides that the court appoint the Marshals Service to serve process in these cases. Together, Rule 4(c)(3) and 28 U.S.C. § 1915(d) “stand for the proposition that when a plaintiff is

proceeding in *forma pauperis* the court is obligated to issue plaintiff's process to a United States Marshal who must in turn effectuate service upon the defendants, thereby relieving a plaintiff of the burden to serve process...." *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996). See also *Donaldson v. United States*, 35 F. App'x 184, 185 (6th Cir. 2002) (holding that the district court has a statutory responsibility to issue an *in forma pauperis* plaintiff's service to the Marshal).

The Court granted Fluker's application to proceed *in forma pauperis* and ordered the U.S. Marshals Service to serve Defendant Carr by August 22, 2024. ECF No. 7; ECF No. 33, PageID.120. The Marshals Service tried to serve Defendant Carr by mailing the summons, copies of the complaint, and a waiver of service form to his employer — Fifth Third Bank. See ECF No. 35; ECF No.36. It was returned as unexecuted. *Id.*

The Marshals Service must now use reasonable efforts to locate and personally serve Carr within 60 days. See *Johnson v. Herren*, No. 2:13-cv-583, 2013 WL6410447, at *2-4 (S.D. Ohio Dec. 9, 2013) (ordering the Marshals Service to take reasonable steps to locate defendant's address through an internet search and by consulting with defendant's former employer); *Reed-Bey v. Pramstaller*, No. 06-CV-10934, 2013 WL 1183301, at *2 (E.D. Mich. Mar. 21, 2013) (Marshals Service was ordered to

personally serve defendants after a fourth waiver request was returned unexecuted). The Marshals Service must inform the Court of the results of its attempt to personally serve Carr by **December 13, 2024**.

s/Elizabeth A. Stafford
ELIZABETH A. STAFFORD
United States Magistrate Judge

Dated: November 4, 2024

NOTICE TO PARTIES ABOUT OBJECTIONS

Within 14 days of being served with this order, any party may file objections with the assigned district judge. Fed. R. Civ. P. 72(a). The district judge may sustain an objection only if the order is clearly erroneous or contrary to law. 28 U.S.C. § 636. **“When an objection is filed to a magistrate judge’s ruling on a non-dispositive motion, the ruling remains in full force and effect unless and until it is stayed by the magistrate judge or a district judge.”** E.D. Mich. LR 72.2.

CERTIFICATE OF SERVICE

The undersigned certifies that this document was served on counsel of record and any unrepresented parties via the Court’s ECF System to their email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on November 4, 2024.

s/Davon Allen
DAVON ALLEN
Case Manager